STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
CONNIE AUD,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 2009SN1090
	)	EEOC NO(S): N/A
and	)	ALS NO(S): 09-0565
	)	
GORDON REACH,	)	
	)	
	)	
Respondent.	)	

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 16th day of June 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
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CONNIE AUD,	)	
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Complainant,	)	**Charge No. 2009SN1090**
	)	**EEOC No. N/A**
and	)	**ALS No. 09-0565**
	)	
GORDON REACH,	)	**Judge William J. Borah**
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes before me following a public hearing on damages held on March 5, 2010, after a Default Order against Respondent, Gordon Reach, was entered on October 21, 2009. Both Complainant and Respondent Reach were present, as well as their attorneys.

The parties agreed that evidence would be heard on two separate cases simultaneously, ALS No. 09-0564 (Respondent Ferris Motel) and ALS No. 09-0565 (Respondent Gordon Reach), despite not being consolidated as one case.

The Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

FINDINGS OF FACT

The following facts were derived from the record file in this matter, as well as from testimony and exhibits admitted at the public hearing.

1. On September 26, 2008, Complainant filed a charge of employment sexual harassment and retaliation, as well as a charge of housing sexual harassment and retaliation, with the Department against Respondents Ferris Motel and Reach, Charge Nos. 2009SF1089 and 2009SN1090.

2. Respondents failed to file their verified responses. As a result, the Department filed petition with the Illinois Human Rights Commission ("Commission") for a default order. On October 21, 2009, the Commission entered its default order against both Respondents and ordered its administrative law section to conduct a hearing on Complainant's damages.

3. From February 2007 through November 2007, Complainant rented a one bedroom mobile home at $500.00 per month for herself and her three children, ages 7, 8 and 15 years old. Respondent was her landlord.

4. In June 2007, Respondent offered, and Complainant accepted, an employment arrangement with Respondent for housing.

5. Complainant worked in an administrative capacity with Respondent's U-Haul business located in the Ferris Motel office. Complainant also performed administrative and cleaning duties for the motel business, and on occasion, provided home care for Respondent's ailing mother, until her death in September 2007.

6. Respondent was Complainant's supervisor for all employment tasks.

7. In November 2007, Respondent offered, and Complainant accepted a three bedroom, double wide mobile home, in exchange for her continued employment. The housing was in substitution for wages. Housing also included utilities. The total housing for employment package was valued at $800.00 per month.

8. In January 2008, Complainant was allowed to take a six week medical leave from all her diverse employment duties after her surgery without affecting the parties' housing for employment arrangement.

9. On March 30, 2008, Respondent texted Complainant by use of his telephone and requested that she be his "girlfriend."

10. Complainant turned down Respondent's offer to be his "girlfriend" and described him as her "friend." Respondent's request was not repeated again.

11. Complainant testified that she neither presumed nor understood Respondent's

text request to be his "girlfriend" was meant to be sexual in nature.

12. From March 30, 2008 through July 2008, Respondent's demeanor became more confrontational. Respondent on a number of occasions loudly chastised Complainant's children, he ceased discussing business decisions with Complainant, he interfered with Complainant's harvesting her garden and generally became rude toward her in public.

13. In July 2008, Respondent made a decision to discontinue his business relationship with U-Haul.

14. In July 2008, Respondent discharged Complainant, because "he was shutting down the U-Haul operation."

15. Complainant was also discharged from any duties with Ferris Motel in July 2008.

16. In July 2008, Complainant was told by Respondent to move out of the mobile home.

17. Complainant requested a rental lease agreement with Respondent for the mobile home in which she and her family resided, but he denied her request.

18. Complainant failed to move out of Respondent's mobile home by August 1, 2008. Respondent did not file a Forcible and Detainer action to have Complainant legally evicted.

19. Complainant failed to vacate the rented premises until September 2008.

20. Between July 2008, through September 2008, Complainant and her family were subjected to a progressive self help procedure by Respondent to have them evicted. Reach caused Complainant's electricity to be shut off for two weeks in August 2008, resulting in $500.00 worth of food spoilage, lack of air conditioning and lighting. Respondent also had Complainant's water turned off, which forced Complainant and her family to bathe at a friend's home and perform domestic tasks elsewhere. In August 2008, Complainant returned to her rental home to discover that the washer and the dryer were removed, and the bookshelves and a dresser were missing with their contents scattered over the floor.

21. Other missing personal property of Complainant also included a Weed Eater, a gas can, an electrical extension cord and some yard tools. A combined replacement value was set at $190.00.

22. Personal property of Complainant that was destroyed included a fishing rod, bowling supplies and trophies, a dresser, her son's model motorcycle collection, her garden and a family trampoline. A combined replacement value was set at $1,225.00.

23. Respondent's self help strategy to evict Complainant from her rental property caused her to feel ill and worried from July 2008 through September 2008.

24. Complainant and her family moved from Respondent's rental property in September 2008.

25. Complainant found employment in October of 2008.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter.

2. At the time of the incidents complained of, Complainant was an "individual" as defined in Section 2-101(E) of the Illinois Human Rights Act ("Act") and was covered by the provisions of the Act.

3. At the time of the incidents complained of, Respondent Reach was Complainant's "supervisor" as defined in Section 2-102(D) of the Act.

4. At the time of the incidents complained of, Respondent and Complainant had a "Real Estate Transaction," as defined in Section 5/3-101(B) of the Act. The parties had entered into an oral rental arrangement.

5. At the time of the incidents complained of Respondent was a "person engaging in a real estate transaction" as defined in 5/3-102(B) of the Act.

6. Respondent failed to respond to Complainant's charge of employment sexual

harassment and retaliation as well as her charge of real estate transaction violation and retaliation filed with the Department; therefore, all the allegations contained therein are deemed admitted as true.

7. In accordance with the Commission's default order, Respondent is liable for his violations of the Act that prohibit discrimination based on sexual harassment in employment (Section 2-102(D)), real estate transaction (Section 3-102(B)) and retaliation (Section 2-102 & 6-101).

8. An argument based on the evidence cannot be made if the argument is an affirmative defense that should have been properly pled.

9. Complainant has proven by a preponderance of the evidence that she has suffered emotional distress from the actions of Respondent of such magnitude that she is entitled to an award of emotional distress damages.

DISCUSSION

Sexual Harassment and Retaliation

Since the Commission's October 21, 2009, default order there has been a finding of liability against Respondent. As a result of the default, the allegations of the Charge are deemed admitted. Based on the evidence, Complainant sustained actual damages.

Actual Damages

The Act provides for an award of actual damages. Section 5/8A-104(B). Actual damages include "indemnification for inconvenience, mental anguish, humiliation, embarrassment, expenses, and deprivation of Constitutional rights." Ayers and Johnson, IHRC, ALS No. 3375 (K), October 3, 1991, quoting, Moorhead v. Lewis, 432 F.Supp.674 (N.D. Ill. 1977).

Back Wages

It is the Commission's charge to make the prevailing complainant whole. Complainant is eligible for back pay consisting of the difference between what she should have received in

salary, but for the conduct of Respondent, and the amount actually received through other employment during the applicable time period. Brown and American Highway Technology, IHRC, ALS No.10805, January 2, 2003.

Complainant requested back wages in the amount of $2,000.00. The calculation of back wages is problematic as Complainant was paid the equivalent of $800.00 per month in rent and utilities for her employment services. Both parties agreed to the $800.00 per month value through their testimony; thus that figure will be used as Complainant's base pay amount per month.

Complainant performed administrative and cleaning duties for Ferris Motel, but she also performed office duties for Respondent's U-Haul business, as well as home care tasks for Reach's mother. Neither Ferris Motel nor Respondent attempted to differentiate the percentage of employment services performed by Complainant exclusively for Ferris Motel or for the benefit of Respondent at the hearing. Although employment tasks assigned to Complainant varied, the assignor was consistently Respondent. Therefore, Respondent is responsible for payment of back wages to Complainant.

As Respondent did not plead that he had a legitimate non-discriminatory reason for Complainant's discharge in July 2008, it is unnecessary to discuss it here for purposes of back wages. Also, in light of Respondent's tactical behavior to coerce Complainant out of her residence, it would be difficult to conclude Complainant enjoyed the use of her home during the months of July 2008 through mid-September 2008. Therefore, Complainant was unemployed for approximately two and one-half months from July 2008 to mid October 2008, when she found employment.

All ambiguities, when calculating back pay, are in favor of the prevailing Complainant. Clark v. IHRC, 141 Ill.App.3d 178, 490 N.E.2d 29 (1st Dist.1986)

Therefore, based on the two and one-half months during which Complainant was unemployed at the amount of $800.00 per month, I recommend a back pay amount of

$1,500.00 be assessed against Respondent. The remainder of back wages is to be discussed in the decision under the Aud and Ferris Motel decision, ALS No. 09-0564.

Emotional Distress

Complainant alleged she suffered emotional distress because of sexual harassment and retaliatory conduct, and requested an award to compensate her for this injury. The Act permits monetary damages for emotional distress, using the totality of the circumstances analysis. Village of Bellwood v. IHRC, 184 Ill.App.339, 541 N.E.2d 1248, (1st Dist.1989).

The act of violating a person's civil rights, by itself, is insufficient to support an award for emotional distress damages. Garrity and Lockett, IHRC, ALS No.6389, May 3, 1996. "The probative factors in determining the amount of an emotional distress award are the nature and duration of the suffering experienced by the complainant." Gipson and H.P. Mechanical, Inc., and Steve Hathorne, IHRC, ALS No. 06-060, August 3, 2007. When reviewing the facts, it is not respondent's conduct *per se*, but rather the reaction of a complainant to respondent's conduct, that justifies emotional distress damages award. Morris and Kentucky Fried Chicken, IHRC, ALS No. 06-134, October 1, 2006.

As noted above, in Bellwood, as here, was a case in which no medical evidence was adduced.

In this case, it is not necessary to discuss the elements of sexual harassment and its burden-shifting framework. It is further unnecessary to review Respondent's reason for Complainant's employment termination, the death of his mother and/or the end of his U-Haul business, and whether those reasons were a pretext for illegal retaliation. Finally, it is not necessary to review if Respondent's eviction of Complainant and his refusal to lease a residence to her was legitimate and non-discriminatory or illegally retaliatory. The Commission's default order made all those issues moot.

1. Sexual Harassment-Employment

Although the allegations of the charge of sexual harassment are deemed admitted as

facts pursuant to Section 8A-102(D)(4), and liability existed against Respondent since the default order of October 21, 2009, it is still a prerequisite to review the "nature and duration of the suffering" experienced by the Complainant, prior to any recommendation of emotional distress damages.

A review of Complainant's first charge, "sexual harassment in employment," is void of any specific facts of unwelcome sexual conduct initiated by Respondent, individually or as her supervisor. It merely recited legal conclusions that she was "subjected to sexual harassment," it was "offensive," she "rejected his advances, and refused to surrender to his continuing hostility."

The testimony of Complainant during the damages hearing of March 5, 2010, revealed the "nature and duration" of the alleged sexual harassment suffered by the Complainant was limited. In both Complainant's direct and cross examination, she testified that Respondent's act of sexual harassment was a single text she received from Respondent on her phone on or around March 30, 2008, asking her to be his "girlfriend." Complainant testified that her response to Respondent's invitation was that she considered him a "friend." Complainant also admitted that the text was "not sexual in nature" and that she did not "interpret" it as sexual in nature. Respondent never raised the issue of Complainant being his "girlfriend" again.

Complainant did not submit any evidence that would cloak the seemingly innocuous label of "girlfriend" with a sinister connotation that would rise to that level to cause emotional distress. The common usage of the term is neutral.

The weight of the evidence of the record, facts admitted by the default order and the testimony at the hearing concerning the nature and duration of the alleged act of sexual harassment in Complainant's employment fail to support an award for emotional distress.

Therefore, I find that no award for emotional distress damages for the count of sexual harassment in employment is fair and reasonable under all of the circumstances presented by this case.

2. Sexual Harassment – Real Estate Transaction & Retaliation

Section 3-102(B) of the Act reads in part: "It is a civil right violation for an *owner* or any other *person* engaging in a real estate transaction ...*because of unlawful discrimination*...to alter the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith..." (Emphases added) Sexual harassment of a tenant is a form of unlawful discrimination prohibited by section 3-102(B). Szkoda v. IHRC, 302 Ill.App.3d 532, 706 N.E.2d 962 (1st Dist. 1998). Retaliation is also a form of unlawful discrimination. Section 2-102 and 6-101. A review of the facts for an award of emotional distress damages is proper here. The discussion below incorporates the case law of emotional distress as cited above.

After Respondent's March 30, 2008, text requesting Complainant to be his "girlfriend," and Complainant's explanational counter text that he was a "friend," Reach's demeanor and behavior toward Complainant and her family changed.

Prior to Complainant's text, Reach unilaterally selected her, then a tenant, in June 2007, to work for him with a number of employment tasks in exchange for free housing. In November 2007, Respondent moved Complainant and her family from a one bedroom mobile home into a three bedroom double wide mobile home. In January 2008, Reach permitted Complainant a six week medical leave without affecting the housing arrangement. Complainant's employment responsibilities increased.

Following Complainant's March 30, 2008, "friend" text, Reach became confrontational with Complainant's children, excluded her from employment decisions and was publicly rude to her. It culminated on or around July 2008, when Respondent discharged Complainant from her employment, demanded that she immediately vacate the rented residence, and refused to lease the property to her. When Complainant did not vacate her home in a timely fashion, Respondent turned to a two and one-half month progressive self help strategy to effectuate the move.

Respondent's sexual harassment and subsequent retaliatory actions, "altered the terms, conditions, privileges and services" in connection with the parties' rental property agreement.

Although Complainant held the status of an "at will employee," the housing for employment services arrangement caused Complainant to concurrently hold the status of a "month to month tenant." 735 ILCS 5/9-207. For that reason, Complainant held a "legal interest" in the residential property where she and her family resided.

Respondent had a dual role, not only as Complainant's supervisor, but as her landlord as well. As supervisor, Respondent was prohibited from sexually harassing and retaliating against Complainant. As a landlord, he had the duty to refrain from sexually harassing and retaliating against his tenant, and to furnish Complainant with the proper statutory notice and length of time to vacate the premises. If Complainant refused to vacate the rental premises in a statutorily timely fashion, then Respondent's only remedy was an order of eviction by a court of general jurisdiction, and not by the use of self help tactics. Phelps v Randolph, 147 Ill. 335, 35 N.E. 243 (1893).

In Szkoda, supra, a month to month oral tenancy existed between the parties. The landlord also acted as the apartment's maintenance person. On one occasion, the Respondent grabbed the back of the Complainant's head, pulled her toward him and made her kiss him. The Complainant slapped him. Later she attempted to pay the rent due for that month, and the Respondent refused to accept the rent payment and told her to move out of the rental property. Complainant was evicted a month later. The Commission and Appellate Court held that the Respondent's sexual harassment and eviction discriminated against the Complainant "by subjecting her to unequal terms and conditions of her tenancy ... in violation of Section 3-102(B) of the Act." The Court also cited Section 3-102(B), "It is a civil rights violation for an owner or any other person engaging in a real estate transaction ...because of unlawful discrimination ... to ...alter the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith..." Id.

Respondent was the "landlord" of the rental property, and thus, a "person engaging in a real estate transaction." The "unlawful" discrimination action, sexual harassment and retaliation as defined by the Act, "altered the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith..."

Respondent's sexual harassment of Complainant and his retaliatory efforts to evict Complainant were in violation of Section 3-102(B), 2-102(D), 2-102(A) and 6-101(A). Respondent's actions against Complainant were contrary to both the employment and real estate sections of the Act.

The "nature and the duration" of the mental suffering experienced by Complainant increased to an actionable level when Reach began to use self help methods to force Complainant and her family out of their residence. In a southern Illinois August, Respondent caused the electricity and water to be turned off for two weeks, which resulted in darkness, a lack of air conditioning and spoiled food. Respondent then entered or caused someone to enter Complainant's residence and removed its washer and dryer. Complainant's weed eater, gas can, extension cord and yard tools were also removed from her rental residence. They were later located in Respondent's shed, but never retrieved. In addition, the following personal property in her home was damaged or destroyed: a bowling ball, her son's sporting trophies, model motorcycle collection, book case, dresser and a fishing rod. Outside her rental property, a trampoline, the deck and her garden were damaged.[1] Respondent's strategy of self help evicted Complainant and her family of three minor children. They left the premises in September of 2008, and moved in with a friend.

Respondent's self help strategy worked as intended. Complainant experienced homelessness as a result of the dark, hot and waterless weeks their home's utilities were shut off in August 2008. Complainant was "sick" to her "stomach" by an uninvited person entering

[1] The emotional distress damages discussion is limited to Complainant, and not the emotional distress suffered, if any, by any her minor children.

her home at will, who then removed, destroyed and scattered her personal property. Complainant felt "worried about the kids" and her "nerves were shot," when she experienced as a tenant and witnessed as a single mother, the fear and bewilderment on the faces of her young sons. The "nature" of the action taken by Respondent was intentionally "malicious" and the "duration" of these actions was over the course of two months.

The "actual damages" provision of section 8B-104(B) of the Act includes damages for humiliation, embarrassment and mental distress. Avers and Johnson, supra. Respondent's sexual harassment case grew more severe when it was accompanied by his intentional behavior to intimidate a family out of their residence. "In August and September 2008, Mr. Reach attempted to force me from my home by engaging in activities to intimidate me into leaving without a court proceeding."

Szkoda granted "economic and non-economic" damages, as well as a "civil penalty" and "attorneys fees," in that real estate transaction case, but it disagreed with the Commission as to the amounts. Szkoda, supra. Garrity and Lockett, IHRC, ALS No. 6389, May 3, 1996, considered the "effects" of the discriminatory conduct, the "duration," "treatment" and "egregiousness and malice." Commission cases have endorsed the concept that awarding emotional distress damages is appropriate where the Act has been violated and where it is clear that recovery of pecuniary losses will not make the complainant whole. Smith and Cook County Sheriff's Office, IHRC, ALS No. 1077, October 31, 2005. Complainant's evidence supported an award of emotional distress.

Therefore, I find that $25,000.00 award against Respondent for emotional distress damages for the counts of sexual harassment and retaliation in a real estate transaction and retaliation in employment is fair and reasonable under all of the circumstances presented by this case.

Cease and Desist

Since default orders have been entered and there has been a finding of liability against Respondent, it is recommended that Respondent be ordered to cease and desist from violating the Act in the future.

Prejudgment Interest

Respondent should also be ordered to pay Complainant interest on the back wages.

Other Economic Damages

Complainant has requested and it is recommended that Respondent be ordered to pay Complainant $1,825.00 for items damages or removed from her home, plus $500.00 for food spoilage occasioned by the shutting off of electricity.

Other economic damages requested are too remote and foreseeable in any move or change of employment .

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

1. Order Respondent to pay Complainant lost back wages in the amount of $1,500.00.

2. Order Respondent to pay Complainant prejudgment interest on the back wages to be calculated as set forth in 56 Ill. Admin. Code. Sec. 5300.1145;

3. Order Respondent to pay zero to Complainant for sexual harassment discrimination, emotional distress in an employment setting;

4. Order Respondent to pay Complainant for her emotional distress damages in the amount of $25,000.00, for real estate transaction sexual harassment and retaliation, as well as employment retaliation;

5. Order Respondent to cease and desist from sexual harassment and retaliation in both employment and real estate transactions;

6. Order Respondent to pay Complainant $1,825.00 for items damaged and removed from her home, plus $500.00 for food spoilage;

7. Respondent is to pay Complainant's reasonable attorney's fees and costs incurred in prosecuting this matter, and that amount are to be determined after review of a motion and affidavit as per Section 8A-104(G) and pertinent case law; Complainant's motion and affidavit is to be filed on or before July 18, 2010; failure to submit such a motion will be seen as a waiver of attorney's fees and costs;

8. If Respondent contests the amount of requested attorney's fees and costs, his written response shall be filed on or before August 9, 2010; failure to file a response will be taken as evidence that Respondent does not contest the amount of fees and costs petitioned by Complainant;

9. The recommended relief in paragraphs 1 through 6 is stayed pending issuance of a Recommended Order and Decision with the issue of attorney's fees resolved.

HUMAN RIGHTS COMMISSION

BY:_____
WILLIAM J. BORAH
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: June 4, 2010

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
CONNIE AUD,	)	
	)	
Complainant,	)	**Charge No. 2009SN1090**
	)	**EEOC No. N/A**
and	)	**ALS No. 09-0565**
	)	
GORDON REACH,	)	**Judge William J. Borah**
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes on Complainant's Petition for Attorney's Fees and Costs after a Recommended Order and Decision was issued on her damages on June 4, 2010. Respondent has chosen not to respond to Complainant's petition. The matter is ready for decision.

During the March 5, 2010, public hearing on Complainant's damages, the parties agreed that evidence would be heard on two separate, but companion cases simultaneously, ALS No. 09-0564 (Respondent Ferris Motel) and ALS No. 09-0565 (Respondent Gordon Reach), despite not being consolidated as one case. Complainant obtained a recommended decision on the amount of her damages in each case. Since the issues and facts were essentially related to one another, as well as the legal services performed by Complainant's attorney, the amount of attorney's fees and costs recommended should be divided equally between the two cases.

The Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

FINDINGS OF FACT

1. On June 4, 2010, a Recommended Order and Decision was entered in this case.

2. All previous findings of fact found in the June 4, 2010, Recommended Order and Decision are incorporated by reference.

3. Complainant, E. Elizabeth Lewis, retained Speir and Whitney, a law firm, in 2009, to represent her before the Illinois Human Rights Commission ("Commission").

4. Complainant's attorney, Richard J. Whitney, provided a proper affidavit listing the legal services he performed and costs spent on behalf of Complainant.

5. The hourly rate for Richard J. Whitney was $150.00. The hourly rate for Brenda Rybak, paralegal, was $75.00.

6. Richard J. Whitney spent 24.87 hours on this matter.

7. Brenda Rybak spent 17 minutes on this matter.

8. The amount of legal fees is $3,455.75.

9. Costs in this matter total $270.00

CONCLUSIONS OF LAW

1. A prevailing complainant may recover reasonable attorney's fees and costs.

2. The requested hourly rate of attorney's fees, costs and the number of hours expended for this legal matter are reasonable and customary in Southern Illinois.

DISCUSSION

Once a finding was made that Respondent violated the Illinois Human Rights Act ("Act") and Complainant's damages had been determined, the only issue remaining was the amount of attorney's fees and costs that should be awarded to Complainant under Section 8A-104(G) of the Act.

Complainant's petition seeks $3,455.75 in attorney's fees and paralegal fees and $270.00 in costs.

The purpose of the attorney's fee provision of the Act is to ensure that attorneys who practice before the Commission are adequately compensated for their services. Lieber and Southern Illinois University Board of Trustee, IHRC, ALS No. 884, September 25, 1987. In Clark and Champaign National Bank, IHRC, ALS No. 354(J), July 2, 1982, the Commission set out factors to consider when awarding fees and costs. The Commission looks to the experience

of the attorney, the customary hourly fees for similar legal services in that locale, and the time spent furthering the case.

The firm of Speir & Whitney, specifically Richard J. Whitney, had provided an adequate affidavit which established that the legal services he performed and the amount charged in fees were reasonable and customary for Southern Illinois. Richard J. Whitney performed 24.07 hours for Complainant's case, which included his preparation for the public hearing, litigating at the public hearing and writing a post hearing brief. A reasonable amount of time was spent in this case.

Therefore, the total amount of $3,455.75 for attorney's fees is reasonable for these cases.

The Act also authorizes recovery of costs as per Section 8A-104(G). Complainant's attorney claims various out of pocket costs incurred in representing Complainant in this matter:

Phone - .60;
Copying - 75 at .07 = $5.25;
Fax – 21 at $1.00 = $21.00;
Transcript - $243.00
$270.60

The Commission has also routinely held that charges such as photocopying are routinely denied, unless those expenses are billed to the client. It is presumed that these expenses are considered overhead and reflected in counsel's hourly rate. Harrell and Barber-Colman Co., n/k/a Invensys Building Systems, Inc., IHRC, ALS No. 9911, December 21, 2001. Complainant's attorney has stated, in the fee petition, that the above costs were charged to the client.

Therefore, the amount of $270.60 for costs is reasonable for these cases.

Since the issues and facts were essentially related to one another, ALS No. 09-0564 (Aud and Ferris Motel) and ALS No. 09-0565 (Aud and Gordon Reach), the amount of attorney's fees and costs recommended should be divided equally between the two cases, but the total amount should be granted.

RECOMMENDATION

Based on the foregoing, it is hereby recommended that:

1. Complainant's petition for fees and costs be granted;

2. Respondent be ordered to pay Complainant the amount of $1,727.88 as attorney's fees in the matter of Aud and Gordon Reach, ALS No. 09-0565;

3. Respondent be ordered to pay Complainant the amount of $135.30 as costs in the matter of Aud and Gordon Reach, ALS No. 09-0565.

HUMAN RIGHTS COMMISSION

BY:_____
WILLIAM J. BORAH
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: September 13, 2010